

Jury Charge

1 MR. BIANCAVILLA: Ready.

2 THE CLERK: Defense ready?

3 MR. CHAMBERLAIN: Ready.

4 (Whereupon, the sworn jurors entered the
5 courtroom and resumed their respective seats.)

6 THE CLERK: Ladies and gentlemen, the Judge will
7 be charging the jury at this time. We ask you to
8 remain and not leave the courtroom while he is
9 charging the jury. If you wish to leave, please do so
10 now. If not, remain in the courtroom for the charge.
11 Thank you.

12 Do both sides stipulate all jurors are present
13 and seated properly?

14 MR. CHAMBERLAIN: So stipulated.

15 MR. BIANCAVILLA: So stipulated.

16 THE COURT: Ladies and gentlemen, following the
17 summations of the attorneys, it now becomes my duty to
18 instruct, that is, to charge you, as to the law
19 applicable to this case.

20 Before doing so, I would like to commend the
21 attorneys for able manner in which each has carried
22 out his responsibility as an advocate and you,
23 members of the jury, for your devotion, patience and
24 attention. It is now of utmost importance that the
25 final words in this case be given to you in a calm

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1 and quiet atmosphere.

2 Trial by jury in a criminal case forms the very
3 basis and is the heart of the true administration of
4 justice in our country, in this state and in our
5 community. It should not be a game of wits nor of
6 histrionics. It is intended as a procedure by which
7 we quietly, rationally and objectively attempt to
8 ascertain the truth.

9 You, as the jurors, and I, as the Court, have a
10 great responsibility in determining that a just
11 result is reached both on the law and on the facts.

12 We have now arrived at that phase of your work
13 where you will be instructed on the law and then
14 retire to your jury room for final deliberations.

15 You will find that my instructions are divided
16 into two main parts; first, a general statement of
17 law applicable to all jury trials in criminal cases,
18 and then a statement of law which is particularly
19 applicable to the crimes charged in the indictment.

20 Now, during the course of their summations, the
21 district attorney and defense counsel, respectively,
22 have commented on the evidence and have suggested to
23 you to certain inferences and conclusions you might
24 reasonably and logically draw from the evidence.

25 The summations of counsel are, of course, not

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1 evidence. However, if the arguments of counsel
2 strike you as reasonable and logical and supported by
3 the evidence, you may, if you so conclude, adopt
4 them.

5 On other hand, if you find such arguments to be
6 unreasonable or illogical or unsupported by the
7 evidence, you may reject them.

8 In the last analysis, it is the function of the
9 jury to draw their own inference or conclusions from
10 the evidence as you recollect the evidence and as you
11 find such evidence credible and believable.

12 Now, at the outset of the trial, I stated for
13 you certain principles which would apply during the
14 course of the trial. Let me briefly review these for
15 you once again.

16 You are bound to accept the law of the case as I
17 instruct you whether or not you agree with it. You
18 must not infer from any of my rulings or anything I
19 may have said during the course of the trial that I
20 hold any personal views for or against this
21 defendant.

22 Further, you are not under any circumstances to
23 draw any inference or conclusion from an unanswered
24 question, nor may you consider any testimony which
25 has been stricken from the record.

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1 In deciding the credibility, that is, the
2 believability of any particular witness, you may use
3 the same tests used in your everyday affairs to
4 determine the reliability or unreliability of
5 statements made to you by others.

6 Among the factors to be taken into account in
7 evaluating and assessing the testimony of a witness
8 are the interest or lack of interest the witness has
9 in the outcome of case, any bias or prejudice that a
10 witness may have, the age, the appearance, the manner
11 in which the witness testified, the opportunity that
12 the witness had to observe the fact testified to, and
13 the probability or improbability of that testimony
14 when viewed in the light of all the other evidence in
15 the case.

16 You, the jury, are the sole and exclusive judges
17 of the facts. It is the duty of the jury to decide
18 each and every issue of fact which has arisen during
19 the course of the trial. No one, not counsel, not
20 the Court, may presume to tell you how the issues of
21 fact should be decided. I repeat, you, and you
22 alone, are the sole and exclusive judges of the
23 facts.

24 The credibility, that is, the believability of
25 each witness is itself an issue of fact solely and

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1 exclusively within the province of the jury.

2 With respect to each witness, you must determine
3 to what extent you find his testimony credible and
4 acceptable. With respect to any individual witness,
5 you may accept in whole or in part such testimony you
6 find credible and worthy of belief, and reject in
7 whole or in part such testimony as you find unworthy
8 of credit or belief.

9 In resolving each and every issue of fact, you
10 must do so solely on the evidence in the case and
11 that evidence alone. You may not consider or
12 speculate on matters not in evidence or matters
13 outside the case.

14 As I have just stated, you, as jurors, are the
15 sole and exclusive judges of the facts. On the other
16 hand, I am the sole and exclusive judge of the law.
17 These responsibilities are separate and distinct and
18 each is of equal importance.

19 As the judge of the law, it has been my function
20 to regulate the course of the trial and to determine
21 what evidence under the law was admissible. My
22 rulings in each instance were solely on the law. My
23 other function is to instruct you on the law
24 specifically applicable in this case.

25 Now, my instructions to you on the law must be

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1 accepted by you whether you agree with them or not.
2 If you have any ideas of your own on what the law is
3 or what you think it should be, it is now your duty
4 under your oath to cast aside your own ideas of the
5 law and to accept the law exactly as I give it to
6 you.

7 Please remember that all of us, Court, counsel,
8 jury, People and defendant are all bound by the laws
9 of our State exactly as these laws provide.

10 I remind you that each attorney is an officer of
11 the Court, owing a high duty to his client. His
12 function is to represent his client to the best of
13 his ability.

14 If, in the interest of advocacy, the attorneys
15 have done or said anything which you deem to be
16 objectionable, you must not let such feeling
17 interfere with your primary duty here to judge the
18 facts impartially and to be fair to both the People
19 and to the defendant.

20 As I have instructed you, arguments made during
21 the course of trial are not evidence and must not be
22 considered by you as such.

23 There have been some verbal exchanges between
24 and among counsel. You must disregard these
25 entirely. In other words, you are not to draw any

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1 inference from anything said by one counsel to the
2 other. Such comments are not in evidence.

3 During the course of the trial, you may have
4 heard colloquy or conversation between the Court and
5 counsel. Bear in mind, such exchanges between the
6 Court and counsel do not constitute evidence and must
7 be disregarded by you.

8 During the course of the trial, I may have put
9 some questions to witnesses. When I did so, it is
10 because I believed the jury required enlightenment on
11 some particular point. My question to the witness
12 and the witness' answer may be considered by you just
13 as you considered any other question and answer.
14 However, you should not attach any special weight to
15 the testimony simply because I asked the question.

16 During the trial, I have made rulings on motions
17 and objections. My rulings are solely on the basis
18 of the law. Such rulings should not be considered by
19 you as giving any indication or creating any
20 inference that I have any opinion as to the issues of
21 the facts which are exclusively for your
22 determination.

23 There are certain fundamental legal principles
24 which are applicable to criminal cases in general.
25 These are safeguards mandated by our constitution,

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1 with which the law surrounds every defendant in a
2 criminal trial. These basic principles of law apply
3 to every criminal case conducted in the courts of New
4 York State regardless of the nature or seriousness of
5 the crime charged. I made reference to these
6 principles in my preliminary instructions at the
7 beginning of the trial, but because of the importance
8 of these principles, I am going to repeat and amplify
9 my instructions as to each of them.

10 Before discussing the constitutional safeguards
11 surrounding every person accused of a crime, let me
12 emphasize that an indictment is simply an accusation
13 required by law solely for the purpose of informing
14 the defendant of the offenses with which he is
15 charged. It is simply a paper writing. It is not,
16 and I repeat not, evidence of anything.

17 The allegations set forth in the indictment are
18 allegations only. They are not evidence. As I say,
19 the indictment is merely the device required by law
20 to inform the defendant of the charges against him
21 and to bring such charges to trial.

22 Put another way, a defendant is never required
23 to prove anything. On the contrary, the People,
24 having accused the defendant of the crimes charged,
25 have the burden of proving the defendant guilty

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1 beyond a reasonable doubt. The People have the
2 burden of proving the defendant's guilt as to every
3 fact and every element essential to conviction.

4 The burden never shifts. It remains on the
5 People and the presumption of innocence remains with
6 every defendant from the beginning of the trial until
7 such time when, during final deliberations, the jury
8 may be convinced that the People have proofed the
9 defendant's guilt beyond a reasonable doubt.

10 Therefore, if, in your minds during your final
11 deliberations, the People have not borne their burden
12 of proof and the presumption of innocence has not
13 been overcome by proof which convinces you beyond a
14 reasonable doubt, then, of course, you must find the
15 defendant not guilty.

16 If, in your minds during your final
17 deliberations you are satisfied from all the
18 evidence that the People have borne the burden of
19 proof and that the presumption of innocence has been
20 overcome by evidence which convinces you beyond a
21 reasonable doubt, then you must, of course, find the
22 defendant guilty.

23 Now, without doubt, one of most important
24 safeguards in our law is the presumption of
25 innocence. It simply says, all persons charged with

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1 a crime and brought to trial are presumed to be
2 innocent unless proved guilty beyond a reasonable
3 doubt. The law, therefore, presumes this defendant
4 to be innocent unless proved guilty beyond a reason
5 doubt.

6 I will now discuss with you the constitutionally
7 mandated standard of proof in all criminal cases,
8 that of prove of guilt beyond a reasonable doubt.

9 The standard of proof required by law in every
10 criminal case is proof of guilt beyond a reasonable
11 doubt. That standard, however, does not require the
12 People to prove the defendant guilty beyond all
13 possibility of doubt or beyond a shadow of a doubt.
14 It requires the People to establish the defendant's
15 guilt beyond a reasonable doubt.

16 Our law, therefore, requires that before this
17 jury may convict the defendant, each of you must be
18 satisfied that the credible evidence is sufficient to
19 convince you beyond a reasonable doubt that the
20 defendant is in fact guilt.

21 The evidence must satisfy you beyond a
22 reasonable doubt that the defendant is in fact the
23 person who committed the crimes charged.

24 The evidence must also establish beyond a
25 reasonable doubt each and every essential element of

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1 the crime charged as I shall later define such
2 elements.

3 What does the law mean when it requires proof of
4 guilt beyond a reasonable doubt? When is doubt of
5 guilt a reasonable doubt under our law?

6 A doubt of the defendant's guilt, to be a
7 reasonable doubt, must be a doubt for which some
8 reason can be given. The doubt, to be reasonable,
9 must therefore arise because of the nature and
10 quality of evidence in the case or from the lack or
11 insufficiency of the evidence in the case.

12 The doubt, to be a reasonable doubt, should be
13 one which a reasonable person acting in a matter of
14 this importance would be likely to entertain because
15 of the evidence or because of the lack or
16 insufficiency of the evidence in the case.

17 A doubt of guilt is not reasonable if, instead
18 of being based on the nature and quality of the
19 evidence or insufficiency of the evidence, it is
20 based merely on sympathy for the defendant or from a
21 mere desire by a juror to avoid a disagreeable duty.

22 I therefore repeat, a doubt of a defendant's
23 guilt to be a reasonable doubt must arise either from
24 the nature and quality of the evidence in the case or
25 from the lack or insufficiency of the evidence in the

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1 case.

2 Therefore, the first duty of each juror is to
3 consider and with all the evidence in the case decide
4 which you believe is credible and worthy of your
5 consideration.

6 The next duty of each juror is to determine
7 whether the juror has, in fact, a reasonable doubt of
8 the defendant's guilt as that term is defined in our
9 law.

10 A reasonable doubt, our law says, is an actual
11 doubt, one which you are conscious of having in your
12 mind after you have considered all the evidence in
13 the case. If, after doing so, you then feel
14 uncertain and not fully convinced of the defendant's
15 guilt and you are also satisfied that in entertaining
16 such a doubt you are acting as a reasonable person
17 should act in a matter of this importance, then that
18 is a reasonable doubt of which the defendant is
19 entitled to the benefit.

20 I repeat, it is the duty of each juror to
21 carefully review, weigh and consider all the evidence
22 in the case.

23 If, after doing so, you find that the People
24 have not proved the defendant's guilt beyond a
25 reasonable doubt as I have defined that term to you,

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1 then you must find the defendant not guilty.

2 On other hand, if you are satisfied that the
3 People have proved the defendant's guilt beyond a
4 reasonable doubt, as I have defined that term to you,
5 you must then find the defendant guilty.

6 In evaluating the evidence and the issues
7 presented, you should use your common sense,
8 knowledge and experience, just as you would in making
9 decisions in your daily life. When I speak of
10 knowledge and experience, in this context, I mean the
11 sort of knowledge and experience that an average
12 person would acquire in life.

13 Some of you, however, may have something more
14 than ordinary knowledge or experience in a certain
15 area. Indeed, it may be that you have developed a
16 special expertise in a certain area well beyond what
17 an average person would have.

18 If you have such a special expertise, and if it
19 relates to some material issue in this case, it would
20 be wrong for you to rely on that special expertise to
21 inject into deliberations either a fact that is not
22 in evidence or inferable from the evidence or an
23 opinion that could not be drawn from the evidence by
24 a person without that special expertise. The reason
25 it would be wrong to do so is that you must decide

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1 this case only on the evidence presented to you in
2 this courtroom.

3 Therefore, with respect to any material issue in
4 this case, you must not use any special expertise you
5 have to insert into the deliberations evidence that
6 has not been presented in this courtroom during the
7 trial.

8 Now, during the time you serve on this jury, you
9 shall not access the internet or World Wide Web by
10 any means available to you for the purposes of either
11 learning about this particular case or to learn about
12 the law and legal issues concerning this case.

13 Your verdict should be based solely on the
14 testimony that you hear and the exhibits that are
15 received in evidence during the trial. I further
16 instruct you that you are bound to accept the rules
17 of law that I give you and you must apply those rules
18 of law to the facts as you find them.

19 Our law provides that in determining your
20 verdict you may not consider or speculate concerning
21 matters relating to sentence or punishment. You must
22 not discuss such matters nor should your
23 deliberations in any way be influenced by such
24 matters.

25 If you render a verdict of guilty, I am required

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1 to impose sentence in accordance with law. The jury
2 has no function relating to the sentence or
3 punishment and such matters are wholly immaterial to
4 your deliberations.

5 Our law provides that both the People and the
6 defendant may as a matter of right call and examine
7 witnesses and each party may cross-examine each
8 witness called by other party.

9 There is, of course, no duty upon the defense to
10 call any witnesses since, as I have already explained
11 to you, it is always incumbent upon the People to
12 prove each and every essential element of the crime
13 charged beyond a reasonable doubt and this burden
14 never shifts.

15 In this case, as in most criminal cases, your
16 decision on the issues of fact which you are required
17 to determine, and also on the ultimate issue of fact,
18 the guilt or innocence of the defendant, will turn on
19 your estimate of the credibility of each witness'
20 testimony and the weight to be accorded such
21 testimony.

22 In a criminal case, each side, the People and
23 the defendant, may call witnesses to establish their
24 respective versions of the facts which bear on the
25 guilt or innocence of the defendant.

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1 You, the jury, must determine the credibility of
2 each such witness and the proper weight to be
3 accorded his or her testimony.

4 In simple terms, that means you, the jury, must
5 decide whether the witness has testified truthfully
6 or whether he has testified falsely, if you are
7 satisfied that the witness has not consciously
8 testified falsely, whether his recollection of the
9 events about which he has testified is accurate and
10 reliable or inaccurate and unreliable.

11 There is no single magic formula by which a jury
12 can evaluate the credibility or believability of a
13 witness. Each of you brings to this jury all the
14 experience acquired in your private life. In your
15 everyday affairs, you make a judgment on the
16 reliability or unreliability of statements made to
17 you by others. The same tests which you apply in
18 your everyday dealings should apply in your
19 deliberations as jurors.

20 May I suggest a few tests you may wish to use?

21 Is the witness an interested or disinterested
22 witness? If he is interested in the outcome of the
23 trial on one side or the other, you may consider such
24 interest in determining how much credit or weight you
25 will give to his testimony.

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1 A witness is an interested witness when, by
2 reason of relationship, friendship, antagonism or
3 prejudice in favor or against one party or the other,
4 his testimony, in your judgment, is biased or likely
5 to be biased toward the side he favors.

6 On the other hand, a disinterested witness is
7 one who has no interest whatsoever in the outcome of
8 the trial, a factor which you may consider in
9 determining the credibility and weight to be given to
10 the testimony of such a witness. However, you should
11 not reject testimony of an interested witness merely
12 because of such interest nor should you accept the
13 testimony of a disinterested witness merely because
14 of such disinterest.

15 Another test you may wish to consider is the
16 test of reasonableness. Is the testimony of the
17 witness plausible and therefore likely to be true or
18 is it implausible and unlikely to be true? This test
19 is based on experience and common sense. Testimony
20 is plausible and believable if, based on your
21 experience, it is more likely to be true than untrue.

22 Another test you should consider is the test of
23 consistency. To determine whether testimony is
24 worthy of belief, it should be weighed with or
25 against the testimony of other witnesses with equal

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1 opportunity to observe and recall the same events.

2 Is the testimony consistent with or inconsistent with
3 other testimony in this case?

4 To determine whether you will believe a witness,
5 you may consider whether his or her testimony at this
6 trial is inconsistent with any prior statement he or
7 she made.

8 Another test in determining the credibility of
9 any witness, you may also wish to consider his
10 demeanor and manner of testifying on the stand. Did
11 he strike you as being intelligent, frank, open and
12 certain or unintelligent, evasive, deceptive or
13 unsure? Did his memory of the events concerning
14 which he testified appear to you to be accurate or
15 hazy? Did he have an opportunity to really see, hear
16 and know the events concerning which he testified?

17 Should you, in the course of your deliberations,
18 conclude that any witness has intentionally testified
19 falsely to a material fact during the trial, you are
20 at liberty to disregard all of his or her testimony
21 on the principle that one who testifies falsely as to
22 one material fact may also testify falsely as to
23 other facts.

24 You are not required, however, in all
25 circumstances, to consider such a witness as totally

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1 unworthy of belief. You may accept so much of his
2 testimony you believe to be true and reject only such
3 part which you conclude is false.

4 By the processes or tests I have described to
5 you, you the jury, as the sole judges of the facts,
6 should be enabled to determine which of the witnesses
7 you believe, what portions of their testimony you are
8 willing to accept and what weight you will give such
9 testimony.

10 In deciding the issues of fact and the ultimate
11 issue of fact, the guilt or innocence of the
12 defendant, you will consider only that evidence on
13 the part of each side which you conclude is credible.
14 Please bear in mind that it is not the number of
15 witnesses called or the length of time taken by each
16 witness on each side, but, rather, the convincing
17 quality of the total evidence, the weight and effect
18 that it has on your minds which should influence your
19 decision.

20 Should you, in the course of your deliberations,
21 conclude that any witness has intentionally testified
22 falsely to a material fact during the trial, you are
23 at liberty to disregard all of his testimony on the
24 principle that one who testifies falsely as to one
25 material fact may also testify falsely to other

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1 facts.

2 You are not required, however, in all
3 circumstances, to consider such a witness as totally
4 unworthy of belief. You may accept so much of his
5 testimony you believe to be true and reject only such
6 part you conclude is false.

7 You will recall that certain police officers
8 have testified in this case. You should use the same
9 tests in evaluating their testimony as you will use
10 in evaluating the testimony of any other witnesses.

11 In other words, the mere fact that a witness is
12 a police officer does not require that his testimony
13 be given any greater or lesser credibility than that
14 of any other witness.

15 In considering the credibility of witnesses
16 where there is a discrepancy between the evidence
17 given by them, it is your duty to reconcile such
18 discrepancy, if you are able to do so.

19 However, if you cannot reconcile the
20 discrepancy, then you may simply determine that you
21 believe the story of one or the other. In this way,
22 you decide which of the witnesses you believe and
23 what weight you will accord to their testimony.

24 The defendant did not testify in this case. I
25 charge you that the fact that he did not testify is

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1 not a factor from which any inference unfavorable to
2 the defendant may be drawn.

3 You will recall that there were witnesses --
4 there was Carlo Rossotti who gave testimony
5 concerning his qualifications to testify as an expert
6 in the field of toolmark impressions, Vito Shiraldi
7 with respect to forensic microscopy and Meghan
8 Clement with respect to DNA.

9 Where scientific, technical or other specialized
10 knowledge will assist the jury to understand the
11 evidence or to determine a fact in issue, our law
12 permits a witness qualified as an expert by
13 knowledge, skill, experience, training or education,
14 to state his opinion on questions in controversy upon
15 the trial for the information of the Court and jury.

16 Please understand that the opinions stated by
17 each expert who testified before you were based on
18 particular facts, as the expert himself observed
19 them, or as the attorney who questioned him asked
20 such expert to assume.

21 To assist you in deciding any question in
22 controversy at trial, you may consider the opinion of
23 any expert, together with the reasons given for such
24 opinion, if any. You may also consider the
25 qualifications and credibility of such expert.

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1 You may reject an expert's opinion if you find
2 the facts to be different from those which served as
3 a basis for his or her opinion. You may also reject
4 an expert's opinion if, after careful consideration
5 of all the evidence in the case, expert and
6 otherwise, you disagree with the expert's opinion.

7 In other words, you, and you alone, are to form
8 your own opinion or draw your own conclusions as to
9 any question in controversy in this case.

10 Now, during the testimony there was evidence
11 presented that a witness had made a prior statement
12 allegedly inconsistent with his or her on-trial
13 testimony. Such prior statement may not be
14 considered by you for the truth or its contents.

15 However, such prior statement, if found by you
16 to be inconsistent with the witness' testimony, may
17 then be considered by you as a factor in determining
18 the credibility of the witness' on-trial testimony.

19 In determining the credibility of any witness,
20 you may consider whether such witness has any bias or
21 prejudice for or against any party in the case. In
22 determining the credibility and weight to be given to
23 the testimony of any witness, you should take into
24 account any such bias or prejudice.

25 Members of the jury, there are two types of

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1 evidence, direct and circumstantial evidence. In
2 order that you may properly consider the evidence, he
3 will define both direct and circumstantial evidence
4 to you and explain to you what the law provides with
5 respect thereto.

6 Direct evidence means exactly what the word
7 implies. It's evidence which tends to establish a
8 material fact at issue without resorting to evidence
9 of another fact. Direct evidence is evidence given
10 by a witness as to what they actually saw, heard,
11 saw, smelled, tasted or touched tending to establish
12 something existed or that something took place.

13 Circumstantial evidence, on other hand, is
14 evidence given by way of exhibits or testimony of
15 witnesses concerning facts not showing that something
16 existed or that something took place, but, rather,
17 from which it can be inferred or deduced that
18 something existed or that something took place.

19 Circumstantial evidence is evidence which flows
20 from direct evidence. It is evidence of one or more
21 facts which may be inferred from the evidence of
22 another fact which must be proven.

23 Now, where there is circumstantial evidence in a
24 case, the jury must do two things.

25 First, the jury must apply the usual tests of

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1 credibility to determine whether the witness
2 testified both truthfully and accurately about what
3 he or she saw, felt and heard.

4 If the jury accepts those facts, it must then
5 determine whether those facts whether those facts
6 support the inference or the conclusion sought to be
7 drawn.

8 If the facts proved in a case, when taken
9 together, all point in one direction of guilty and to
10 the exclusion of any other hypotheses, there could be
11 no substantial reason why the jurors should be
12 reluctant to determine the issue of guilt in a
13 criminal case upon circumstantial evidence.

14 There are certain rules which control the jury's
15 considering the circumstantial evidence. The
16 circumstances must proved by direct evidence and must
17 not be left to conjecture, suggestion, speculation or
18 other inferences.

19 You may not base an inference upon an inference
20 or draw one inference from another. The conclusions
21 sought must flow naturally from the proven facts and
22 must be consistent with all of them.

23 In other words, it is of no value if the
24 circumstances and facts proven from which the
25 inference are to be drawn are consistent both with

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1 the defendant's innocence and the defendant's guilt.

2 To be of value, circumstantial evidence must be
3 such that all of the facts and circumstances proven
4 are consistent with and must point irresistibly to
5 the defendant's guilt and at the same time are
6 inconsistent with his innocence.

7 If two inferences can be drawn from the
8 defendant's conduct, one consistent with guilt and
9 one consistent with innocence, the jury must draw the
10 inference consistent with innocence.

11 Evidence, therefore, is not to be disregarded or
12 disbelieved merely because it is circumstantial. A
13 fact can be proven as completely through
14 circumstantial evidence as direct evidence.

15 Now, during the trial statements alleged to have
16 been made by the defendant to Police Officer Stark,
17 Detective McHugh and Detective Parpan have been
18 admitted into evidence and have been heard by you.

19 With regard to all of those statements, I now
20 instruct you that even though the statements have
21 been admitted into evidence and you are aware of its
22 contents, you must give no weight whatsoever to the
23 statement in arriving at your verdict unless you
24 find, in accordance with my instructions, first, that
25 it was voluntarily made, and, second, that it was

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1 truthful.

2 Whether a statement was voluntarily made and
3 whether a statement is truthful are both issues of
4 fact for the jury to determine in accordance with
5 legal definitions of those terms.

6 I instruct you that the burden of proof is upon
7 the People to convince you beyond a reasonable doubt
8 that the statement was voluntarily made and also that
9 the statement was truthful.

10 I further instruct you that if the People fail
11 to establish to your satisfaction beyond a reasonable
12 doubt that the statement was voluntarily made, you
13 must, in arriving at your verdict, disregard it and
14 strike it from your minds as though you had never
15 heard it. You must disregard it even if you believe
16 the statement was in all respects truthful.

17 And, even if the People prove to your
18 satisfaction beyond a reasonable doubt that the
19 statement was voluntarily made, the People must also
20 prove to your satisfaction beyond a reasonable doubt
21 that the statement was in whole or in part truthful.

22 I shall first define the term voluntarily made
23 and later the term truthful.

24 Why does our law require that a statement must
25 be voluntarily made before a jury is allowed to

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1 consider it in arriving at its verdict? It is
2 because our system of law is an accusatorial system.

3 Under an accusatorial system, the guilt of a
4 defendant must be established by the People by
5 evidence freely and voluntarily secured.

6 In simple terms, that means that the People may
7 not prove a defendant's guilt by a statement out of
8 the defendant's own mouth unless such statement was
9 knowingly, freely and willingly given by the
10 defendant.

11 Therefore, a statement is voluntarily made by
12 the defendant only if it was in fact knowingly,
13 freely and willingly given by him.

14 Our law does not specifically define when a
15 statement is voluntarily made. Instead, it defines
16 when a statement is involuntarily made.

17 In general, section 60.45 of our Criminal
18 Procedure Law provides that a statement of a
19 defendant is involuntarily made, and, therefore, may
20 not be considered by the jury, if it is obtained by
21 the police or by a prosecutor by means of the use of
22 force or by threats of force, or by means of
23 deception, trickery or promise likely to induce an
24 unwilling statement, or in violation of the
25 defendant's rights under the constitution of the

Jury Charge

1 United States or the State of New York.

2 These constitutional rights include the right to
3 remain silent and the right to the advice and
4 assistance of a lawyer before the defendant answers
5 any questions and gives a statement to the police or
6 prosecutor.

7 I instructed you earlier that in addition to
8 proving that the statement of the defendant was
9 voluntarily made, the People are required to prove to
10 your satisfaction beyond a reasonable doubt that the
11 statement was truthful.

12 If you find that the statement was involuntarily
13 made, you must disregard it whether or not it was
14 truthful. Only if you are satisfied beyond a
15 reasonable doubt that the statement was voluntarily
16 made must you then turn to the consideration of
17 whether it was also truthful. For just as the jury
18 is required to disregard any testimony of a witness
19 given during trial which it finds false, it must also
20 disregard any statement of the defendant which is
21 finds to be false in whole or in part.

22 In deciding whether the defendant's statement is
23 true or false, in whole or in part, you should apply
24 the same test of credibility you apply in determining
25 whether the testimony of a witness is true or falls.

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1 Are the facts in the statement consistent with or
2 inconsistent with the facts as presented by the
3 witnesses? Is the defendant's statement probable or
4 improbable? Did the defendant have any motive or did
5 he lack any motive for giving a false statement?
6 These are some of the tests you should apply.

7 In reaching your verdict, you may give weight
8 and consideration only to that part of the statement
9 you find to be truthful and disregard any part you
10 find to be false.

11 I summarize briefly my instructions.

12 Before you give any consideration or any weight
13 to the defendant's statement, the People must satisfy
14 you beyond a reasonable doubt that the statement was
15 voluntarily made as I have defined that term to you.

16 If the People have failed to satisfy you beyond
17 a reasonable doubt that the statement was voluntarily
18 made, in arriving at your verdict, you must disregard
19 the statement as though it had never been received in
20 evidence and as though you had never heard it. You
21 must then base your verdict solely on other evidence
22 remaining in the case.

23 I further instruct you that, with regards to the
24 statements allegedly made by the defendant to
25 Detectives McHugh and Parpan only, you are to

Jury Charge

1 consider the following instruction.

2 As I instructed you, a statement is voluntarily
3 made if it is given knowingly, freely and willingly.
4 In order to assure that the statement is knowingly
5 given, the police or prosecutor before asking any
6 questions must advise the defendant of his
7 constitutional right in words or substance as
8 follows: That he has the right to remain silent; and,
9 that anything he says to the police or district
10 attorney may be used against him in a court of law;
11 that he has the right to the presence and advice of a
12 lawyer before he answer any questions; and, that if
13 he cannot afford a lawyer, one will be appointed for
14 him prior to any questioning if he so desires.

15 However, these warnings must be given to a
16 person only if he is in custody at the time of
17 questioning. If the person is not in custody, the
18 warnings need not be given.

19 Now, the defendant, if the defendant is in
20 custody, the warnings must be given to him before he
21 is questioned. If not given to him, then any
22 statement the defendant makes is involuntarily made
23 as a matter of law and must not be considered by the
24 jury in arriving at its verdict.

25 On other hand, if the defendant was not in

Jury Charge

1 custody, then the warnings need not be given to him.
2 Any statement he then makes may be considered by the
3 jury in arriving at its verdict.

4 When the facts are disputed, the question
5 whether the defendant was in custody at the time he
6 was questioned is an issue of fact for the jury.

7 Our law says that a person is in custody when he
8 is not free to go. When the police stop or detain a
9 person for the purpose of questioning him, the test
10 is whether he is free to go, whether the police would
11 prevent him from leaving if he desired to leave.

12 However, the law says it is not the defendant's
13 belief whether he is free to go that is
14 determinative. Instead, the test is rather what a
15 reasonable person, innocent of any crime, would have
16 the right to believe, if he had been in the
17 defendant's position.

18 That is the test you, the jury, must apply.
19 What would a reasonable person, innocent of any
20 crime, have the right to believe if he had been in
21 the defendant's position?

22 Of course, in deciding that question, the jury
23 may consider the conduct of the police in deciding
24 what a reasonable man would have the right to
25 believe. If the police stopped the defendant with

Jury Charge

1 guns drawn, if the police handcuffed the defendant,
2 if the police took the defendant without his consent
3 from the street to the police station in like or
4 similar fact situations, a reasonable person in the
5 defendant's position would probably have the right to
6 believe he could not get up and go home.

7 I instruct you that the defendant does not have
8 to prove that he was in custody.

9 The burden of proof is upon the People to prove
10 to your satisfaction beyond a reasonable doubt that
11 the defendant was not in custody when he was
12 questioned and therefore was free to go.

13 If the People fail to prove the defendant was
14 not in custody or you have a reasonable doubt
15 thereof, you must find that the defendant's statement
16 was involuntarily made.

17 On the other hand, if the People prove to your
18 satisfaction beyond a reasonable doubt that the
19 defendant was not in custody, you will find that the
20 statement was voluntarily made and you will continue
21 your deliberations in accordance with my further
22 instructions.

23 Now we come to the second part of my charge in
24 which I will instruct you with respect to the
25 specific charges contained in the indictment.

Jury Charge

1 The indictment consists of two counts, under
2 count one, murder in the second degree; under count
3 two, murder in the second degree. These two charges
4 are based upon two different subdivisions of the
5 Penal Law and are based upon two different theories
6 of law.

7 The first count is murder in the second degree
8 which reads as follows:

9 The defendant, Paul Scrimo, on or about the 12th
10 day of April, the year 2000, in the County of Nassau,
11 State of New York, with intent to cause the death of
12 Ruth Williams, caused the death of Ruth Williams.

13 Under our law, a person is guilty of murder in
14 the second degree when, with intent to cause the
15 death of another person, he or she causes the death
16 of such person.

17 The term intent used in this definition has its
18 own special meaning in our law. I will now give you
19 the meaning of that term.

20 Intent means conscious objective or purpose.
21 Thus, a person acts with intent to cause the death of
22 another when that person's conscious objective or
23 purpose is to cause the death of another.

24 In order for you to find the defendant guilty of
25 this crime, the People are required to prove, from

Jury Charge

1 all the evidence in the case beyond a reasonable
2 doubt both of the following two elements:

3 That on or about the 12th day of April, the year
4 2000, in the County of Nassau, the defendant,
5 Paul Scrimo, caused the death of Ruth Williams; and
6 that the defendant did so with the intent to cause
7 the death of Ruth Williams.

8 Therefore, if you find that the People have
9 proven beyond a reasonable doubt both of those
10 elements, you must find the defendant guilty of the
11 crime of murder in the second degree as charged in
12 the first count of the indictment.

13 On other hand, if you find that the People have
14 not proven beyond a reasonable doubt either one or
15 both of those elements, us must find the defendant
16 not guilty of the crime of murder in the second
17 degree as charged in the first count of the
18 indictment.

19 If, and only if you find the defendant not
20 guilty under count one of the defendant, then you
21 must consider count two of the indictment.

22 Now, count two is murder in the second degree
23 which I will read to you as follows: The defendant,
24 Paul Scrimo, on or about the 12th day of April, the
25 year 2000, in the County of Nassau, State of New

Jury Charge

1 York, under circumstances evincing a depraved
2 indifference to human life, recklessly engaged in
3 conduct which created a grave risk of death to Ruth
4 Williams and thereby caused the death of Ruth
5 Williams.

6 Under our law, a person is guilty of murder in
7 the second degree when, under circumstances evincing
8 depraved indifference to human life, he or she
9 recklessly engages in conduct which creates a grave
10 risk of death to another person, and thereby causes
11 the death of that person.

12 Some of the terms used in this definition have
13 their own special meaning in our law. I will now
14 give you the meaning of the following terms:
15 recklessly, depraved indifference to human life.

16 A person acts recklessly with respect to another
17 person's death when that person engages in conduct
18 which creates a substantial, unjustifiable and grave
19 risk that another person's death will occur, and when
20 he or she is aware of and consciously disregards that
21 risk, and when that risk is of such nature and degree
22 that disregard of it constitutes a gross deviation
23 from the standard of conduct that a reasonable person
24 would observe in the situation.

25 Under our law, a crime committed recklessly is

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1 generally regarded as less serious and blameworthy
2 than a crime committed intentionally. But when
3 reckless conduct is engaged in under circumstances
4 evincing a depraved indifference to human life, the
5 law regards that conduct as so serious, so egregious,
6 as to be the equivalent of intentional conduct.

7 Conduct evincing a depraved indifference to
8 human life is much more serious and blameworthy than
9 conduct which is merely reckless. It is conduct
10 which, beyond being reckless, is so wanton, so
11 deficient in moral sense and concern, so devoid of
12 regard for the life or lives of others, as to equal
13 in blameworthiness intentional conduct which produces
14 the same result.

15 In determining whether a person's conduct
16 evinced a depraved indifference to human life, a jury
17 would have to decide whether the circumstances
18 surrounding his or her reckless conduct, when
19 objectively viewed, made it so uncaring, so callous,
20 so dangerous and so inhumane, as to demonstrate an
21 attitude of total and utter disregard for the life of
22 the person or persons endangered.

23 In order for you to find the defendant guilty of
24 this crime, the People are required to prove, from
25 all the evidence in the case, beyond a reasonable

Jury Charge

1 doubt, each of the following three elements:

2 One, that on or about April 12th 2000, in the
3 County of Nassau, the defendant, Paul Scrimo, caused
4 the death of Ruth Williams;

5 Two, that the defendant did so by recklessly
6 engaging in conduct which created a grave risk of
7 death to Ruth Williams; and.

8 That the defendant engaged in such conduct under
9 circumstances evincing a depraved indifference to
10 human life.

11 Therefore, if you find that the People have
12 proven beyond a reasonable doubt each of those
13 elements, you must find the defendant guilty of the
14 crime of murder in the second degree as charged in
15 the second count of the indictment.

16 On other hand, if you find that the People have
17 not proven beyond a reasonable doubt any one or more
18 of those elements, you must then find the defendant
19 not guilty of the crime of murder in the second
20 degree as charged in the second count of the
21 indictment.

22 Members of the jury, to assist you during your
23 final deliberations, I have prepared a written list
24 called a verdict sheet which contains a list of
25 specific counts of the indictment and the offenses

Jury Charge

1 submitted to you for your final determination.

2 The verdict sheet lists the options or choices
3 that you may make after careful consideration of all
4 the evidence in accordance with the Court's
5 instructions and, further, provides a column for your
6 foreman to record your verdict as to each of the
7 separate offenses submitted to you for your final
8 determination.

9 The court officer will bring a copy of the
10 verdict sheet to the jury room when you retire for
11 your final deliberations. If at any time during you
12 are final deliberations you have any questions
13 concerning your use of the verdict sheet or any
14 questions concerning your review of any of the
15 offenses listed thereon, please feel free to send a
16 note in writing to the Court and I will be pleased to
17 promptly respond to your inquiry.

18 Now, ladies and gentlemen of the jury, before
19 you retire to commence your deliberations, permit me
20 to instruct you as follows:

21 One, in order to return a verdict, each juror
22 must agree to such a verdict;

23 Two, as jurors you have a duty to consult with
24 one another and to deliberate with a view to reaching
25 an agreement, if it can be done without violence to

Jury Charge

1 individual judgment;

2 Three, each juror must decide the case for
3 himself or herself but only after impartial
4 consideration of the evidence with his fellow jurors;

5 Four, no juror should surrender his honest
6 conviction as to the weight or effect of the evidence
7 solely because of the opinion of his fellow jurors,
8 or for the mere purpose of returning the verdict;

9 Five, in the course of deliberations, a juror
10 should not hesitate to re-examine his own views and
11 change his opinion if convinced it is erroneous.

12 Certain documents and papers have been marked as
13 exhibits and received in evidence during the trial.
14 Those exhibits that have been received in evidence
15 will be available for your examination during the
16 course of your deliberations in the jury room.

17 After you have retired to your deliberations,
18 you may request that one or more, or all, of the
19 exhibits received in evidence be delivered to you in
20 the jury room. Simply make that request of the court
21 officer and the exhibits will be promptly delivered
22 to you in the jury room.

23 During any recess when you are absent from the
24 jury room, all of the exhibits must be delivered to
25 the court officer so that they may be held by the

Jury Charge

1 clerk of the court and returned to you when you
2 resume your deliberations.

3 To conduct your deliberations in an orderly
4 fashion, you must have a foreman. Of course, his
5 vote is entitled to no greater weight than that of
6 any other jurors.

7 Under our law, the juror whose name was first
8 drawn and called must be designated by the Court as
9 the foreman and report your verdict to the Court.
10 Therefore, juror number one will be the foreperson.

11 Now, in order to reach a verdict, all twelve
12 members of the jury must agree. Your verdict must be
13 unanimous. Whenever all of your members are in
14 agreement on a verdict, you may report your verdict
15 to the Court.

16 I have now outlined for you the rules of law
17 applicable to this case and the process by which you
18 are to weigh the evidence and determine the facts.

19 In a few minutes you will retire to the jury
20 room for your deliberations. Your function to reach
21 a fair conclusion from the law and the evidence is an
22 important one. When you are in the jury room, listen
23 to each other and discuss the evidence and issues in
24 the case among yourselves.

25 Remember in your deliberations that the People,

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1 the defendant and the Court rely upon you to give
2 full and conscientious deliberation and consideration
3 to the issues and evidence before you. By so doing,
4 you carry out to the fullest your oaths as jury men
5 and women to well and truly try the issues of this
6 case and to render a true verdict.

7 (Whereupon, the following took place at the
8 bench outside of the hearing of the jurors and
9 defendant.)

10 THE COURT: Do the People have any additional
11 requests?

12 MR. BIANCAVILLA: No.

13 THE COURT: Do the People have any exceptions?

14 MR. BIANCAVILLA: I do, Judge. I have an
15 exception to the charge of truthfulness. I just got
16 finished for an hour and 20 minutes telling this jury
17 everything he told the police was a lie. You just
18 told this jury in the truthfulness portion that if
19 they decided the defendant was not being truthful,
20 they should disregard that portion of the statements.
21 I don't believe the truthfulness charge was necessary
22 in this charge.

23 I have no problem with any other portions but
24 how can you tell the jury if they decide he lied they
25 should disregard the statements. It's inconsistent

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1 with the case. I don't think it was necessary or
2 should have been charged.

3 MR. CHAMBERLAIN: What I heard was the standard
4 charge on credibility and how you determine
5 truthfulness. To try to change that at this point, I
6 would strenuously object to. I think the charge was
7 totally in accordance with the law on how a jury
8 determines credibility and truthfulness. You laid out
9 all the elements, not for one side or the other, and
10 it would apply across the board. I would object to
11 any change.

12 MR. BIANCAVILLA: Judge, I'm not objecting to the
13 credibility charge. I am objecting to the portion of
14 your charge relating to a defendant's statement.
15 Mr. Chamberlain is talking about the credibility
16 charge. I am not talking about the credibility
17 charge.

18 THE COURT: I understand that.

19 MR. BIANCAVILLA: I am talking about the charge
20 specifically relating to when a defendant makes a
21 statement.

22 MR. CHAMBERLAIN: This is with respect to -- if I
23 heard you correctly, it was with respect to the
24 credibility of the person and whether the statement
25 was truthful. I have no problem with the charge as it

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1 was delivered.

2 THE COURT: I understand the prosecution's theory
3 of the case but I cannot alter my CJI charge.

4 MR. BIANCAVILLA: It doesn't apply, Judge.
5 That's not a confession. That's a charge where the
6 defendant confesses. That's not a charge under these
7 circumstances.

8 THE COURT: Counsel, I charged the jury with the
9 standard CJI charge.

10 MR. BIANCAVILLA: Judge, the only portion of that
11 charge is the truthfulness section, because it doesn't
12 apply under the facts and circumstances of this case.

13 THE COURT: I understand.

14 MR. BIANCAVILLA: It just doesn't apply. You are
15 charging me out of the box.

16 THE COURT: Any other exceptions?

17 MR. CHAMBERLAIN: Judge, I mentioned exhibits. I
18 would like the jury to be told if they wanted a read
19 back, they can have one.

20 THE COURT: I believe I did that. I'll be glad
21 to tell them again.

22 MR. CHAMBERLAIN: One other thing, Judge, at the
23 end you told the jury that to reach a verdict they
24 must be unanimous. They could interpret that to be
25 that they must be unanimous.

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1 THE COURT: They do.

2 MR. CHAMBERLAIN: Except they have the right to
3 disagree. They have the right to disagree.

4 THE COURT: Before I take a verdict, all twelve
5 are to agree, Mr. Chamberlain, otherwise we have a
6 hung jury.

7 MR. CHAMBERLAIN: I am aware of that but the
8 instruction should be if you can't reach a verdict
9 that's something else, but to reach a verdict you must
10 be unanimous.

11 THE COURT: I read the CJI charge to the jury.

12 MR. CHAMBERLAIN: Fine. Thank you.

13 THE COURT: Counsel, with respect to the
14 exhibits, do I have the stipulation from both counsel
15 that if the jury should request any of the exhibits, I
16 can send them in without your being present? For the
17 videotape, they will have to be brought back into the
18 courtroom.

19 MR. BIANCAVILLA: Yes.

20 MR. CHAMBERLAIN: Yes, Judge.

21 MR. BIANCAVILLA: There are a number of exhibits
22 introduced into evidence which are not to be shown to
23 the jury. We have kept them separate.

24 THE COURT: You have agreed on what should go in.

25 MR. CHAMBERLAIN: Yes.

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1 MR. BIANCAVILLA: Yes.

2 THE COURT: Anything further?

3 MR. BIANCAVILLA: No.

4 (Whereupon, the following took place in open
5 court.)

6 THE COURT: Now, ladies and gentlemen, I am going
7 to speak to the two alternate jurors for a minute
8 since our trial jury of twelve is about to retire to
9 its deliberations.

10 I now charge and I emphasize that there must be
11 no further communications or contact between the
12 trial jury of twelve and the alternate jurors. Our
13 alternate jurors will be provided with a convenient
14 and private room to await the rendition of the trial
15 jury's verdict.

16 Again, I admonish our alternate jurors that they
17 are not to discuss this case among themselves. They
18 are not to read anything about the case nor are they
19 to permit anyone to discuss it with them or in there
20 presence.

21 And, again, I charge that the alternate jurors
22 are not to form any opinion as to the factual issues
23 in the case nor are they to form or express any
24 opinion as to the guilt or innocence of the
25 defendant, unless and until such time as they may be

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1 requested to participate in the trial jury's
2 deliberations.

3 The first twelve jurors, please follow the court
4 officer so you can commence your deliberations.

5 (Whereupon, the sworn jurors exited the
6 courtroom.)

7 THE COURT: Now, will the two alternates please
8 follow the court personnel.

9 (Whereupon, the sworn alternate jurors exited
10 the courtroom.)

11 THE COURT: Counsel, we will await the verdict.

12 (Whereupon, court stood in recess while the
13 jury deliberated.)

14 COURT OFFICER: Jury entering.

15 (Whereupon, the sworn jurors entered the
16 courtroom and resumed their respective seats.)

17 THE CLERK: Do both sides stipulate all sworn
18 jurors are present and seated properly?

19 MR. BIANCAVILLA: Yes.

20 MR. CHAMBERLAIN: Yes.

21 THE COURT: Ladies and gentlemen, it's been a
22 long day for you and at this point I am going to send
23 you home and ask you to come back here tomorrow
24 morning at 9:30.

25 Now, as today's court session is drawing to a

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1 close and I am excusing you, the law requires that
2 before I can excuse you I advise you of the rules you
3 must follow during recess.

4 These rules are to guarantee the parties a fair
5 trial and generally the same ones you were required
6 to follow prior to deliberations, but the law
7 requires that I recite them at this stage to
8 re-emphasize their importance.

9 The reason for this emphasis is that you are in a
10 critical stage. You are in the process of
11 deliberations and you are not being sequestered. That
12 means you're not being kept together overnight where
13 we can have greater assurances that you will be
14 following the rules.

15 You will be permitted to go home after
16 deliberations have begun. There may now be a greater
17 temptation to discuss the case with someone else or
18 go to the scene. You must resist that temptation.
19 If you discuss this case with someone else or visit
20 the scene, that would not only violate my order, but
21 it would also violate the oath you took to follow the
22 rules.

23 The rules are as follows: Deliberations must be
24 conducted only in the jury room when all jurors are
25 present. Therefore, all deliberations must now cease

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1 and must not be resumed until all twelve of you have
2 returned and are together again in the jury room.

3 Two, during the recess don't discuss the case
4 among yourselves or with anyone else.

5 Three, you must remain under the obligation not
6 to accept, agree to accept, from any person,
7 receiving or accepting any payment or benefit in
8 return for supplying any information concerning this
9 trial.

10 Four, you must promptly report to me any attempt
11 by any person to converse with you about the case or
12 to influence you or any other member of the jury.

13 Five, you must not visit or view the place where
14 the crimes charged were allegedly committed or any
15 other place discussed in the testimony.

16 Six, you must not review or listen to any
17 accounts or discussions of this case reported in any
18 news media.

19 Now, ladies and gentlemen, I want you to
20 understand why these rules are so important. The law
21 does not want you to talk to anyone about the case,
22 nor to permit anyone to talk to you about the case
23 because only the twelve of you are authorized to
24 render a verdict in this case. Only you have been
25 found to be and promised to be fair and no one else

Proceedings

1 has been qualified.

2 The law also does not permit you to visit any
3 place discussed in the testimony. First, you cannot
4 always be sure the place will be in the same
5 condition. In light of what you see, you become a
6 witness not a juror. As a witness, you may now have
7 an erroneous view of the scene that's not subject to
8 correction by either party and this is simply not
9 fair.

10 Finally, the law requires that you not read or
11 listen to any news accounts of this case should they
12 there be any. You must decide this case on the
13 evidence presented in this courtroom. You are not to
14 decide this case based on some purported view or
15 opinion and you are not to the access the internet
16 with respect to this case.

17 Thus, you understand and appreciate the
18 importance of following these rules in accordance
19 with your oaths as promised to me. I hope you will
20 do so.

21 At this point let me wish you all a very nice
22 evening. We'll see you tomorrow morning at 930.

23 (Whereupon, the sworn jurors exited the
24 courtroom.)

25 THE COURT: Counsel, we'll see you tomorrow.

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1 THE CLERK: Mr. Scrimo, the trial is being
2 adjourned to 9:30 tomorrow morning, May 21st. If you
3 do not appear for trial tomorrow, a warrant may be
4 issued for your arrest, bail may be forfeited and your
5 case may proceed in your absence.

6 * * *

7 (Whereupon, the above matter was adjourned to
8 May 21st, 2000.)
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1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT : PART XIV

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 - against -

5 PAUL SCRIMO,

6 Defendant.

7 -----X

8 May 21, 2002
9 262 Old Country Road
Mineola, New York

10 B E F O R E:

11 THE HONORABLE JEFFREY BROWN,
12 County Court Judge.

13 A P P E A R A N C E S:

14 (As previously noted.)

15 * * *

16

17
18 THE CLERK: Case on trial, continues. All
19 parties are present. The jury is not present at this
20 time.

21 People ready?

22 MR. BIANCAVILLA: Ready.

23 THE CLERK: Defense ready?

24 MR. CHAMBERLAIN: Ready.

25 THE COURT: Counsel, we have received two notes

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1 from the jury. The first one is marked Court Exhibit
2 VI. It says, We the jury would like to see the
3 People's Exhibit of the chart of pictures. Pursuant
4 to your stipulation, that was in evidence, that was
5 given to them.

6 Then they say, List of evidence and list of
7 witnesses.

8 Now, with respect to the list of evidence, I
9 will tell them the exhibits are in evidence, if
10 that's what they want. I will be glad to give them
11 all of the evidence upon there request.

12 MR. CHAMBERLAIN: If I may, Judge, with respect
13 to that, would your Honor indicate they may have all
14 or any of the evidence.

15 THE COURT: Of course.

16 Then, with respect to the list of witnesses, the
17 names of the witness are in evidence. I will be glad
18 to read them the list of witness but I will not give
19 them the list of witnesses, if that's what they are
20 looking for.

21 Counsel, do you have any objection to that?

22 MR. CHAMBERLAIN: No, Judge.

23 MR. BIANCAVILLA: No, Judge.

24 THE COURT: The second note says -- and it's
25 marked Court Exhibit VII -- We the jury would like to

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1 have the summation of both lawyers read back to us.

2 I will tell the jury that the summations are not
3 in evidence and I can not do that.

4 COURT OFFICER: Jury entering.

5 (Whereupon, the sworn jurors entered the
6 courtroom and resumed their respective seats.)

7 THE CLERK: Do both sides stipulate that all
8 sworn jurors are present and seated properly?

9 MR. BIANCAVILLA: So stipulated.

10 MR. CHAMBERLAIN: So stipulated.

11 THE COURT: Good morning, ladies and gentlemen.
12 I have received two notes from you which I will read.

13 The first note marked Court Exhibit VI says, We
14 the jury would like to see the People's Exhibit of
15 the chart of pictures, comma, list of evidence and
16 list of witnesses.

17 We have already provided to you pursuant to your
18 request the chart of pictures. With respect to the
19 list of evidence, that I cannot give you a list of
20 the evidence.

21 However, if you should desire to have any of the
22 evidence, all you have to do is request any of it.
23 You can have all of it or any of it. Just send us a
24 note.

25 With respect to the list of witnesses, I will

Proceedings

1 read the names out.

2 With respect to the second note marked Court
3 Exhibit VII, it says, We the jury would like to have
4 the summations of both lawyers read back to us.
5 Summations are not in evidence, ladies and gentlemen.
6 I cannot have that read back to you.

7 Now, the list of witnesses are as follows: John
8 Williams; William Nimmo; Caroline Daly; Frank
9 DeFalco; Penny Shouse; Thomas Hartman; Mellisa
10 Notarnicola; Francine Quinn; Gerard Connell; Sven
11 Bost, Detective Dennis Downes; Detective Charles
12 Costello; Doctor Gerard Cantanese; Doctor Thomas
13 Manning; Detective Vito Shiraldi; Carlo Rossotti;
14 Detective Kevin McCarty; Meghan Clement; Lisa Lawson;
15 Detective Jack McHugh; Detective Robert Dempsey;
16 Detective Brian Parpan; Mohammed Hussain; Detective
17 James Cereghino; Police Officer Pamela Stark and
18 John Kane.

19 Ladies and gentlemen, the jury can resume their
20 deliberations and the alternates shall be kept
21 separate.

22 (Whereupon, the sworn jurors exited the
23 courtroom to continued deliberating.)

24 THE CLERK: Case on trial continues. All parties
25 are present. The jurors are not present at this time.

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1 Are the People ready?

2 MR. BIANCAVILLA: Yes.

3 THE CLERK: Defense ready?

4 MR. CHAMBERLAIN: Ready.

5 THE COURT: Counsel, I received a note from the
6 jury which was marked Court Exhibit VIII. It says, We
7 the jury would like a detailed definition of the two
8 charges, count one and count two.

9 I plan on rereading the charge with the
10 definitions for count one and count two.

11 Bring the jury in.

12 COURT OFFICER: Jury entering.

13 (Whereupon, the sworn jurors entered the
14 courtroom and resumed their respective seats.)

15 THE CLERK: Do both sides stipulate that all
16 sworn jurors are present and seated properly?

17 MR. BIANCAVILLA: Yes.

18 MR. CHAMBERLAIN: Yes, so stipulated.

19 THE COURT: Good afternoon, ladies and gentlemen.
20 We received a note from you which has been marked
21 Court's Exhibit VIII which says we the jury would like
22 a detailed definition of the two charges, count one
23 and count two.

24 I will reread that to you now.

25 Under our law, a person is guilty of murder in

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1 the second degree when, with intent to cause the
2 death of another person, he or she causes the death
3 of such person.

4 The term intent used in this definition has its
5 own special meaning in our law. I will now give you
6 the meaning of that term.

7 Ladies and gentlemen, this is count -- I am
8 reading to you -- I'll start over.

9 Count one of the indictment, under our law, a
10 person is guilty of murder in the second degree when,
11 with intent to cause the death of another person, he
12 or she causes the death of such person.

13 The term intent used in this definition has its
14 own special meaning in our law and I will now give
15 you the meaning of that term.

16 Intent means conscious objective or purpose.
17 Thus, a person acts with intent to cause the death of
18 another when that person's conscious objective or
19 purpose is to cause the death of another.

20 In order for you to find the defendant guilty of
21 this crime, the People are required to prove, from
22 all of the evidence in the case, beyond a reasonable
23 doubt, both of the following two elements:

24 One, that on the 12th day of April in the year
25 2000 in the County of Nassau, the defendant,

Proceedings

1 Paul Scrimo, caused the death of Ruth Williams; and,
2 two, that the defendant did so with the intent to
3 cause the death of Ruth Williams.

4 Therefore, if you find that the People have
5 proven beyond a reasonable doubt both of those
6 elements, you must find the defendant guilty of the
7 crime of murder in the second degree as charged in
8 the first count.

9 On other hand, if you find that the People have
10 not proven beyond a reasonable doubt either one or
11 both of those elements, you must find the defendant
12 not guilty of the crime of murder in the second
13 degree as charged in the first count.

14 If you find the defendant not guilty under count
15 one of the indictment, then you must consider count
16 two of the indictment.

17 Now, count two of the indictment: Under our
18 law, a person is guilty of murder in the second
19 degree when under circumstances evincing a depraved
20 indifference to human life, he or she recklessly
21 engages in conduct which creates a grave risk of
22 death to another person and thereby causes the death
23 of that person.

24 Some of the terms used in this definition have
25 their own special meaning in our law. I will now

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1 give you the meaning of the following terms,
2 recklessly and depraved indifference to human life.

3 A person acts recklessly with respect to another
4 person's death when that person engages in conduct
5 which creates a substantial unjustifiable and grave
6 risk that another person's death will occur and when
7 he or she is aware of and consciously disregards that
8 risk and when that risk is of such nature and degree
9 that disregard of it constitutes a gross deviation
10 from the standard conduct that a reasonable person
11 would observe in the situation.

12 Under our law, a crime committed recklessly is
13 generally regarded as less serious and blameworthy
14 than a crime committed intentionally. But when
15 reckless conduct is engaged in under circumstances
16 evincing a depraved indifference to human life, the
17 law regards that conduct as so serious, so egregious,
18 as to be the equivalent of intentional conduct.

19 Conduct evincing a depraved indifference to
20 human life is much more serious and blameworthy than
21 conduct which is merely reckless.

22 It is conduct which, beyond being reckless, is
23 so wanton, so deficient in moral sense and concern,
24 so devoid of regard for the life or lives of others,
25 as to equal in blameworthiness intentional conduct

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1 which produces the same result.

2 In determining whether a person's conduct
3 evinced a depraved indifference to human life, a jury
4 would have to decide whether the circumstances
5 surrounding his or her reckless conduct, when
6 objectively viewed, made it so uncaring, so callous,
7 so dangerous and so inhuman as to demonstrate an
8 attitude of total and utter disregard for the life of
9 the person or persons endangered.

10 In order for you to find the defendant guilty of
11 this crime, the People are required to prove, from
12 all the evidence in the case, beyond a reasonable
13 doubt, each of the following three elements:

14 One, that on or about April 12th, 2000, in the
15 County of Nassau, the defendant, Paul Scrimo, caused
16 the death of Ruth Williams;

17 Two, that the defendant did so by recklessly
18 engaging in conduct which created a grave risk of
19 death to Ruth Williams; and

20 Three, that the defendant engaged in such
21 conduct under circumstances evincing a depraved
22 indifference to human life.

23 Therefore, if you find that the People have
24 proven beyond a reasonable doubt each of those
25 elements, you must find the defendant guilty of the

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1 crime of murder in the second degree as charged in
2 the second count.

3 On other hand, if you find that the People have
4 not proven beyond a reasonable doubt any one or more
5 of those elements, you must find the defendant not
6 guilty of the crime of murder in the second degree as
7 charged in the second count.

8 Ladies and gentlemen, you may resume your
9 deliberations.

10 The alternates will be kept separate

11 (Whereupon, the sworn jurors exited the
12 courtroom to continue deliberating.)

13 THE CLERK: Case on trial continues. All parties
14 are present. The jurors are not present at this time.

15 Are the People ready?

16 MR. BIANCAVILLA: Ready.

17 THE CLERK: Defense?

18 MR. CHAMBERLAIN: Defense ready.

19 THE COURT: Counsel, we've received a note from
20 the jury marked Court Exhibit IX, and it says, We the
21 jury have reached a verdict, time, 2:45 p.m.

22 Bring the jurors in.

23 Before we bring the jury in, I want to tell you
24 now, I don't want any outbursts once we receive the
25 verdict from the jury.

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1 COURT OFFICER: Jury entering.

2 (Whereupon, the sworn jurors entered the
3 courtroom and resumed their respective seats.)

4 THE CLERK: Do both sides stipulate that all
5 sworn jurors are present and seated properly?

6 MR. BIANCAVILLA: So stipulated.

7 MR. CHAMBERLAIN: So stipulated.

8 THE COURT: Ladies and gentlemen, we have
9 received a note from you dated today's date at 2:45
10 p.m., We the jury have reached a verdict.

11 The clerk is directed to take the verdict.

12 THE CLERK: Under indictment 1456N of 2000, the
13 People of the State of New York versus Paul Scrimo,
14 Mr. Foreman, has the jury agreed upon an unanimous
15 verdict?

16 THE FOREMAN: yes.

17 THE CLERK: Please stand, Mr. Foreman, and, also,
18 the defendant, please rise.

19 Under count one, murder in the second degree,
20 how do you find this defendant, guilty or not guilty?

21 THE FOREMAN: Guilty.

22 THE CLERK: You may have a seat.

23 Members of the jury, listen to your verdict as
24 it has been recorded through your foreperson. You
25 say you find the defendant guilty of murder in the

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1 second degree and so say you all?

2 (Whereupon, all twelve sworn jurors answered in
3 the affirmative.)

4 MR. CHAMBERLAIN: I would like the jury polled,
5 your Honor.

6 THE COURT: Please poll the jury.

7 THE CLERK: Members of the jury, you have heard
8 your verdict as it was recorded through your
9 foreperson. I will now ask each of you individually
10 if that was your verdict.

11 (Whereupon, the jury was polled by the clerk and
12 all answered in the affirmative.)

13 THE COURT: Ladies and gentlemen, before you
14 leave, I want to take this opportunity to thank you
15 for beneficial public service that you rendered as
16 trial jurors in this case.

17 I wish to especially commend you for having
18 sacrificed your time to take part in this litigation.
19 You are deserving of further commendation for both
20 the attention and patience displayed by you during
21 the course of this trial.

22 When you leave here, you cannot fail to carry
23 with you the knowledge that to be a member of a trial
24 jury is one of most fundamental services that an
25 American citizen can render to his country. It is

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1 our jury system that is the means of dispensing equal
2 justice to all litigants.

3 By doing your duty as citizens, you not only
4 have rendered outstanding public service but also
5 have, incidentally, participated actively in the
6 affairs of our government. I discharge you now by
7 saying thanks to everybody here.

8 One last thing, I would just ask if you would
9 spend a couple of minutes with me in chambers so I
10 can talk to you. If you will follow the court
11 officers they'll take you in

12 (Whereupon, the sworn jurors exited the
13 courtroom.)

14 THE COURT: The defendant is remanded.
15 Sentencing is set for June 18th, 20002.

16 MR. CHAMBERLAIN: Judge, I'll reserve motions, if
17 I may, until the date of sentence.

18 THE COURT: Yes, Mr. Chamberlain.

19 Thank you, Counsel. I want to express my thanks
20 to you for the way you portrayed yourselves during
21 the course of this trial. I appreciate your
22 cooperation.

23 MR. BIANCAVILLA: Thank you, Judge.

24 THE COURT: Also, Counsel, I'll tell the jury if
25 they would like to speak to you that they are more

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1 than welcome to speak to you, or not, as the case
2 maybe.

3 MR. CHAMBERLAIN: Thank you.

4 MR. BIANCAVILLA: Thank you.

5 * * * *

6 Certified to be a true and accurate
7 transcript of the proceedings.

8
9 
10 BUFF BRANSON
Senior Court Reporter

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